Petition

81-1971

No.

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CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

THE TRUSTEES OF THE FIRST BAPTIST CHURCH OF SILVER SPRING, MARYLAND,

Petitioner

v.

SUPERVISOR OF ASSESSMENTS OF MONTGOMERY COUNTY, MARYLAND,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF SPECIAL APPEALS OF MARYLAND

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QUESTIONS PRESENTED FOR REVIEW

1. Do the religion clauses of the First Amendment, made applicable to the states by the Fourteenth Amendment, require the State of Maryland to accept as a minister of the gospel a person so designated by a bona fide, long established church, absent proof of improper methods of choice? That is, may the State of Maryland designate who is and who is not a minister of the gospel regardless of the designation of a bona fide, long established church?

   a. Did Respondent's examination and evaluation of the religious content of Petitioner's activities constitute an impermissible entanglement between church and state in violation of the religion clauses of the First Amendment to the United States Constitution?

   b. Did Respondent's actions in the instant case unconstitutionally inhibit religion?

2. Does the "equal protection of the laws" clause of the Fourteenth Amendment prohibit the State of Maryland from making invidious discriminations which exempt from real estate taxation parsonages of one religious denomination's ministers and deny such exemption to another's even though those ministers are performing the same general type of religious work?

LIST OF PARTIES TO THE PROCEEDING BELOW

The caption of the case in this Court contains all parties named in the proceeding below, namely, The Trustees of the First Baptist Church of Silver Spring, Maryland (a Maryland non-stock corporation) and the Supervisor of Assessments of Montgomery County, Maryland.

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No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

THE TRUSTEES OF THE FIRST BAPTIST CHURCH OF SILVER SPRING, MARYLAND,

Petitioner

v.

SUPERVISOR OF ASSESSMENTS OF MONTGOMERY COUNTY, MARYLAND,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF SPECIAL APPEALS OF MARYLAND

Petitioner respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Court of Special Appeals of Maryland entered in this proceeding on October 14, 1981.

OPINIONS DELIVERED IN COURTS AND AGENCIES BELOW

A letter dated April 29, 1976 from Respondent to Petitioner denying Petitioner's application for exemption on the subject property is attached to this Petition as Appendix H. The Maryland State Property Tax Assessment Ap-

peal Board's letter affirming the ruling of Respondent Supervisor is attached hereto as Appendix G. The Memorandum of Grounds for Decision of the Maryland Tax Court (May 29, 1979) is attached hereto as Appendix F. The ruling of the Circuit Court for Montgomery County, Maryland (January 4, 1980) is attached as Appendix E. The Memorandum of Grounds for Decision of the Maryland Tax Court on remand (June 23, 1980) is attached as Appendix D. The transcript containing the ruling of the Circuit Court for Montgomery County, Maryland (October 22, 1980) is attached as Appendix C. The unreported opinion of the Court of Special Appeals of Maryland (October 14, 1981) is attached as Appendix B. The Order of the Court of Appeals of Maryland denying certiorari in this case is attached as Appendix A.

GROUNDS FOR JURISDICTION

The judgment of the Court of Special Appeals of Maryland was entered October 14, 1981. A timely petition for writ of certiorari was filed with the Court of Appeals of Maryland on November 30, 1981 and was denied by an order dated January 26, 1982. The jurisdiction of this Court is invoked under 28 U.S.C. 1257 (3).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

U.S. Constitution, Amendment I:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Constitution, Amendment XIV, Section 1:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein

> they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Annotated Code of Maryland, Article 81, § 9 Real and Personal Property Exemptions:

> (a) *Generally; exemptions strictly construed.*—The following real and tangible personal property are exempt from assessment and from State, county and city ordinary taxation, except as otherwise stated, which exemptions shall be strictly construed:
>
> (c) *Churches*—Property owned by a religious group or organization and actually used exclusively for public religious worship, including parsonages and convents, and property owned by any such group or organization and actually used exclusively for educational purposes.

STATEMENT OF THE CASE

Petitioner, The Trustees of the First Baptist Church of Silver Spring, Maryland (a Maryland non-stock corporation) is the owner of a tract of land described as Lot 16, Block 4 "Jordan and Smith's Addition to Silver Spring," located at 835 Bonifant Street, Silver Spring, Maryland. The Montgomery County Tax Account Number is 1041118. The said tract was used as the residence of Rev. Michael Smith, an Associate Minister of the Church. Rev. Smith, a graduate of the Southwestern Theological Seminary, served exclusively during the tax years at issue here as a full time, paid Minister of the Baptist Church. He was authorized to read scripture, lead prayers, preach, and to perform the two sacred ordinances of the Church, Baptism and the Lord's Supper. He also engaged in religious counseling to the congregation. Sacred music is integral to Baptist worship, and Rev. Smith served as Minister of Music. His primary duties included planning music for worship services and training seven choirs, including two youth

choirs who required special training for evangelistic outreach into ghetto areas and other underprivileged communities. In short, as a commissioned Minister, he was recognized within his denomination as authorized to perform whatever services his congregation assigned to him.

On November 1, 1975, Petitioner filed its Application for Exemption, requesting exemption from real property taxes for the aforesaid tract of land. On April 29, 1976, the Supervisor of Assessments denied Petitioner's Application for Exemption. Subsequently, Petitioner filed a timely appeal to the Property Tax Assessment Appeal Board. On October 13, 1976, a hearing was held and on February 7, 1977, the Property Tax Assessment Appeal Board in Case No. 2944 "Affirmed that part of the Supervisor's ruling denying the exemption...." Thereafter, on March 1, 1977, Petitioner filed a timely Petition of Appeal with the Maryland Tax Court, a quasi-judicial administrative body. Paragraphs 8 and 9 of this Petition alerted the court to the constitutional issues involved. That court conducted a hearing on February 7, 1979. At that hearing the constitutional questions were introduced by the following colloquy:

> Q. (By Mr. Lowe) ... Dr. Baker, ... what is the Baptist concern in a case like the one before The Court this morning?
>
> A. Well going back to ... *U.S.* v. *Ballard* ... [and] ... *Presbyterian Church of U.S.* v. *Mary Blue Hall* [sic] ... The Court was saying simply that ... The State has no right under the Constitution ... to look at the doctrinal differences between churches.
>
> Q. Now, what doctrinal differences are involved in this case?
>
> A. Well, I think that [Baptists] have gotten involved in the case simply because the idea—

The testimony was cut off at that point when the Assistant Attorney General's objection that constitutional issues were not involved—"We are concerned particularly with the use of the land"—was sustained. The Maryland Tax Court in its Memorandum of Grounds for Decision at p. 2 (Appen-

dix F) recognized that the constitutional issues had been raised: "...Petitioners argued that a State has no right to interfere with doctrinal differences in religion, and that a construction by the State that 9(c) was intended to allow an exemption to only one parsonage ... would be unconstitutional." Though the court missed the thrust of the constitutional arguments, it acknowledged that the arguments had been made. The Memorandum of Grounds for Decision, dated May 29, 1979, in Case No. 1094 "B" affirmed the assessment in Account No. 1041118.

Petitioner then filed a timely appeal to the Circuit Court for Montgomery County, Maryland. The First and Fourteenth Amendment issues were briefed and argued before the Circuit Court and the case was remanded for the purpose of taking further evidence. At the second hearing before the Tax Court the parties advised the court that they had entered into three stipulations which they believed would be helpful in resolving the dispute: (1) that an exemption is not automatically denied because a religious organization has multiple parsonages; (2) that exemption is not denied merely because a parson or minister to a religious congregation is not ordained; (3) that there are at least three Roman Catholic churches located in Montgomery County, Maryland all of which maintain convents and rectories which house more than one priest or more than one nun. The Assistant Attorney General pointed out that Petitioner had made its constitutional arguments "and the remand here today, as we see it, is to address this proposal as to whether this particular Baptist church ... has been singled out for treatment which is not given to other churches who have equally complex ministerial and educational services for their congregation." Petitioner pointed out, "... that also brings us to the First and Fifth [sic] Amendment objections that were raised before Judge Latham, that we were not permitted to go into." Petitioner then raised its First and Fourteenth Amendment claims in some detail. Respondent's counsel replied to those arguments at length. The court in its decision (Appendix D) entered an order affirming the assessment but did not discuss the constitutional questions raised.

Petitioner again timely appealed to the Circuit Court for Montgomery County, where the case was heard on October 22, 1980. Again the First and Fourteenth Amendment issues were briefed. In Appellee's Memorandum on Reappeal, Petitioner's First Amendment establishment arguments and it's equal protection claims were recognized in detail. They were also a part of Petitioner's oral arguments, and the court recognized the establishment and equal protection arguments in its colloquy with the Assistant Attorney General. At the close of that hearing the court indicated that, while it did not agree with the ultimate ruling reached by the Tax Court, it was compelled to affirm because, in its opinion, that ruling was supported by substantial evidence and was fairly debatable (Appendix C).

Petitioner appealed to the Court of Special Appeals of Maryland, and in its brief two of its five arguments raised the constitutional issues:

> IV. Appellant's right to equal protection of the laws, as guaranteed by the Fourteenth Amendment to the United States Constitution, was violated when Appellee used a higher or different standard in determining its tax status than that used for other churches in Montgomery County.
>
> V. Appellee's examination and evaluation of the religious content of Appellant's activities constitutes an impermissible entanglement between church and state, in violation of the religion clauses of the First Amendment to the United States Constitution.

The Court of Special Appeals of Maryland affirmed the ruling of the Circuit Court in an unreported opinion dated October 14, 1981 (Appendix B). A timely petition for writ of certiorari was filed with the Court of Appeals of Maryland on November 30, 1981, and the same was denied by an order dated January 26, 1982 (Appendix A).

Petitioner avoided payment of the taxes for as long as practicable. However, in order to avoid tax sales of the property, Petitioner was ultimately forced to pay $1,705.48 for the 1976 tax year, $2,221.17 for the 1977 tax year, and

$2,299.88 for the 1978 tax year, for a total of $6,226.53 in taxes paid.

Though the constitutional issues were raised at every level of the proceedings, the courts below were largely unresponsive to them. Because of the courts' inaction the churches of Maryland have been left in the untenable position of having the State make ecclesiastical decisions for them.

REASONS FOR GRANTING THE WRIT

I. THE CASE PRESENTS AN IMPORTANT QUESTION OF CONSTITUTIONAL LAW NOT YET SETTLED BY THIS COURT.

This case goes well beyond the question of whether or not Petitioner must pay taxes on a house which it owns and had designated as a parsonage for its Associate Minister who resided therein. The Tax Court of the United States has spoken to the issue of whether a full-time Jewish cantor was a "minister of the gospel" within the meaning of § 107 of the Internal Revenue Code of 1954, *Silverman* v. *Commissioner of Internal Revenue*, 57 T.C. 727 (1972). This Court in *Kedroff* v. *Saint Nicholas Cathedral*, 344 U.S. 94, 116 (1952), did hold that the freedom of a church to select its own clergy has "federal constitutional protection as a part of the free exercise of religion against state interference." However, it has not spoken to that issue as it relates to the establishment clause of the First Amendment and whether, under that clause, a State may impose its judgments of who may be considered a "minister of the gospel" on those of a bona fide, long established church.

II. THE DECISIONS BELOW ARE IN CONFLICT WITH APPLICABLE PRINCIPLES ESTABLISHED BY THIS COURT.

Because the question above is a matter of first impression, the decisions below do not represent a direct conflict on that question with a decision of this Court. However,

the decisions below ignore, or are contrary to, a number of basic principles which have been established by this Court:

1. The state has no authority to examine the religious doctrines of a church or to determine ecclesiastical matters for a church. The Constitution denies that authority to the State. *Presbyterian Church in the United States* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church,* 393 U.S. 440, 449, 450 (1969). *See also, Zorach* v. *Clauson,* 343 U.S. 306 (1952); *Fowler* v. *State of Rhode Island,* 345 U.S. 67 (1953).

2. This Court has made it clear that the State may not be excessively entangled with religion as it has been in the instant case. *Walz* v. *Tax Commission,* 397 U.S. 664 (1970); *Lemon* v. *Kurtzman,* 403 U.S. 602 (1971); *Early* v. *DiCenso,* 403 U.S. 602 (1971). Respondent's actions in monitoring the activities of Rev. Smith and weighing the extent of his contribution to the spiritual needs of his congregation constitute administrative entanglement and create political divisiveness along religious lines. *Committee for Public Education* v. *Nyquist,* 413 U.S. 756, 794 (1973).

3. The State may not favor one religion over another but must accord equal treatment to all. *Flast* v. *Cohen,* 392 U.S. 83 (1968). *See also, Board of Education* v. *Allen,* 392 U.S. 236 (1968); *Everson* v. *Board of Education,* 330 U.S. 1 (1947); *Tilton* v. *Richardson,* 403 U.S. 672 (1971). The State must also be neutral toward religion. *Epperson* v. *State of Arkansas,* 393 U.S. 97 (1968); *Walz* v. *Tax Commission, supra.*

In the instant case it was stipulated that there were three Roman Catholic Church properties in Montgomery County, Maryland, the county in which Petitioner's property is located, which are tax exempt as parsonages or convents. Testimony showed that there was, in these cases, a presumption that the properties housed ministers. In the instant case the Assessor examined Rev. Smith's job description and, in the face of the unrefuted testimony of Petitioner's Senior Minister, arbitrarily determined that Rev. Smith was not a Minister. This Court has held that

the State may not aid one religion to the detriment of others or impose a burden on one religion which is not imposed on another. *Buckley* v. *Valeo*, 424 U.S. 1 (1976). "A taxing statute may make a classification for the purpose of fixing the amount or incidence of the tax *provided ... that all persons ... within the classification are treated with equality.*" *Stebbins* v. *Riley*, 268 U.S. 137, 142 (1925) (emphasis added).

III. THE CASE IS RIPE FOR A DECISION BY THIS COURT.

All Maryland administrative and judicial remedies have been exhausted. A failure of this Court to hear the case would leave standing a decision which denies basic First and Fourteenth Amendment rights enunciated by this Court to many Maryland churches.

CONCLUSION

For all the reasons stated, a writ of certiorari should issue to the Court of Special Appeals of Maryland to review the judgment and opinion of that court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Petition for Writ of Certiorari has been deposited with the U.S. Post Office, first class mail, prepaid, addressed to all counsel of record at their post office address this ____ day of _____, 1982.

_____

GARLAND E. LOWE

Appendix

APPENDIX A

IN THE COURT OF APPEALS OF MARYLAND

TRUSTEES OF THE FIRST BAPTIST CHURCH

v.

SUPERVISOR OF ASSESSMENTS OF MONTGOMERY COUNTY

Petition Docket No. 486
September Term, 1981

(No. 137, September Term, 1981
Court of Special Appeals)

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Robert C. Murphy
Chief Judge

Date: January 26, 1982.

APPENDIX B

UNREPORTED

IN THE COURT OF SPECIAL APPEALS OF MARYLAND

No. 137

SEPTEMBER TERM, 1981

TRUSTEES OF THE FIRST BAPTIST CHURCH OF SILVER SPRING, MARYLAND

v.

SUPERVISOR OF ASSESSMENTS OF MONTGOMERY COUNTY

GILBERT, C.J.
MORTON
THOMPSON,
JJ.

PER CURIAM

Filed: October 14, 1981

The Trustees of the First Baptist Church of Silver Spring, Maryland, (The Church), appellant, appeals from a judgment of the Circuit Court for Montgomery County,

affirming the Maryland Tax Court, which had denied a tax exemption under Md. Ann. Code, art. 81, § 9 (c), as to certain real property owned by The Church.

The appellant presents 5 issues:

"1. Did the case not come to an end when the sole issue upon which it was originally brought before the Tax Court, namely the plurality of parsonages, was stipulated in appellant's favor by the parties?

2. Was the decision of the Maryland Tax Court supported by substantial evidence appearing in the record made in that Court, such that a reasoning mind reasonably could have reached the conclusion reached by the Tax Court?

3. Was the ruling of the Circuit Court not contrary to law in that the court erroneously limited its scope of review of a Constitutional question over which it had original jurisdiction?

4. Was appellant's right to equal protection of the laws, as guaranteed by the Fourteenth Amendment to the United States Constitution, violated when the Supervisor of Assessments used a higher or different standard in determining its tax status than that used for other churches in Montgomery County?

5. Did appellee's examination and evaluation of the religious content of appellant's activities constitute an impermissible entanglement between church and state, in violation of the religion clauses of the First Amendment to the United States Constitution?"

FACTS

In 1976, The Church was served by two ordained ministers consisting of the principal or senior minister, The Reverend James M. Windham, and his associate, The Reverend Arthur L. Herbert. The Church was also served by Michael Smith, who was designated as its "minister of music." His primary activities consisted of planning and directing music for worship services, teaching children mu-

sic, and training seven choirs that frequently went on tours as part of The Church's "evangelistic outreach program." Mr. Smith also trained members of these choirs to give witness to their religious faith "along with their performance of music." He was a graduate of Southwestern Theological Seminary and was authorized to perform two of several "sacred ordinances" of the particular denomination. Mr. Windham testified, however, with regard to Mr. Smith's actual performance of the ordinances, "I could not document the time of Mr. Smith's having done so, but I know that he was authorized to do so." Mr. Smith was a layman although he was "commissioned" within The Church. To be commissioned, as explained by Windham, is to reach the second of three steps en route to full ordination as a minister. Mr. Windham characterized Smith's commission as a reflection of the church's confidence in him and a recommendation that he pursue studies "getting ready for the full ministry." Mr. Windham testified that he was the one who generally led the services, provided counseling, delivered the sermons and performed the sacred ordinances of the church. In his absence, Mr. Herbert would take his place. He referred to Mr. Smith as being "third in line, I think, normally in the graduation of the ministry core."

Mr. Windham owns the house in which he resides; but, The Church owns two separate houses which are used as residences by Mr. Herbert and Mr. Smith. There is no evidence that any form of education or worship took place in the house occupied by Mr. Smith. The Church applied to the Supervisor of Assessments of Montgomery County, (Supervisor), appellee, for an exemption from assessment and taxation for their properties for the 1976 tax year based on the provisions of art. 81, § 9 (c) which provides the following:

> "Property owned by a religious group or organization and actually used exclusively for public religious worship, including parsonages and convents, and property owned by any such group or organization and actually used exclusively for educational purposes."

The Church sought an exemption for both the Herbert and Smith residences alleging them to be "parsonages." The Supervisor denied both exemptions. The Tax Court held that the house occupied by Mr. Herbert was exempt as a parsonage, but Mr. Smith's house was ineligible. The Church thereupon appealed to the Circuit Court for Montgomery County, where, Judge Richard A. Latham remanded the case to the Tax Court for the taking of additional testimony "which deals with the equal protection aspect of the case."

On remand The Church took the deposition of Thomas A. Cero, the Superintendent of Exempt Real Property for the State Department of Assessments and Taxation, and obtained a stipulation that there were three Catholic churches in Montgomery County which had rectories and convents each housing more than one priest or nun in a dormitory setting. Mr. Cero testified in this deposition that "most or all" convents and rectories enjoy tax exempt status. On June 23, 1980, the Tax Court again entered an order granting an exemption for Mr. Herbert's residence, but denying an exemption for Mr. Smith's residence. In this opinion the Tax Court stated that a parsonage under § 9 (c) must be "... the home of the spirtual leader of a congregation whose primary occupation is that of a promoter of spirtual well being. This person or these persons attached to a single congregation have the responsibility of teaching and counseling others as to their spirtual needs." The Court concluded:

> "The evidence in this case indicates that the duties performed by Mr. Smith are those which are generally performed by lay volunteers in other religious organizations. Mr. Smith's primary occupation is not that of a counselor or teacher and based on this fact it is our opinion that his home owned by the Petitioner is not a parsonage."

Again, The Church appealed to the Circuit Court for Montgomery County, where, on October 22, 1980, Judge Richard B. Latham affirmed the Tax Court's decision. The Church thereupon noted this appeal.

I Stipulation

On the second review by the Tax Court and the Circuit Court for Montgomery County, the issue was held to be whether the activities of Michael Smith, in his role as minister of music for the First Baptist Church of Silver Spring, were of such nature as to render the residence provided to him by The Church a "parsonage" eligible for property tax exemption under art. 81, § 9 (c). Upon initial review by the Tax Court, the issue had a different focus, namely, whether a single church was entitled to exemptions for a plurality of parsonages. The appellant contends that once the party stipulated that a church could have a multiplicity of residences for a multiplicity of ministers, the case was at an end and the decision should have been rendered in its favor. We disagree. Although the Supervisor may have conceded that a church is entitled to an exemption for each of its parsonages, he never conceded that Mr. Smith's abode was a parsonage. This is revealed in the following discussion:

> "Mr. Taliaferro [Attorney for the Supervisor]: I would be willing to stipulate to the issue being one of whether there is an entitlement to an exemption for more than one parsonage. I think it's going to be difficult to stipulate, because it will turn on the role of the so-called parsons who occupy these properties.
>
> And I don't think we can arrive at a stipulation that embraces those roles. I think we would have trouble stipulating to that.
>
> Acting Chief Judge Blair: Very well."

We note that The Church did not view the plurality of parsonages issue as the only issue because it proceeded to introduce testimony describing the roles and activities of each of its ministers. Thus, we conclude that the parties did not intend that the plurality of parsonages question be determinative of the taxable status of the property.

II Evidence to Support the Decision of the Maryland Tax Court

The Tax Court concluded that the "primary occupation"

of The Church's "minister of music" was "not that of a counselor or a teacher" and thus the residence in which he dwelt was "not a parsonage." The Church contends this decision was erroneous as a matter of law, in that it was not supported by substantial evidence. We think there was substantial evidence upon which a reasonable mind could find the activities of Michael Smith, as "minister of music" of the First Baptist Church of Silver Spring, were not of such nature as to result in the characterization of his residence as a parsonage. The Church had the burden of proof to demonstrate by "affirmative evidence" that Mr. Smith's residence was a parsonage,[1] but its evidence showed that his time was primarily spent in musical planning and direction, as opposed to counseling, etc. Even The Church's counsel concedes that Mr. Smith's counseling activities were occasional. Additionally, although he was stated to be qualified to do so, The Church's principal minister could not document any time when Mr. Smith had performed one of the ordinances for the congregation. The record discloses that Mr. Smith's function was to direct music for worship service, teach music to the children, and train the seven choirs who often went on tour as part of The Church's evangelistic outreach program. This evidentiary pattern establishes a reasonable doubt as to whether Mr. Smith was a clergyman whose residence was intended to be exempt as a parsonage under § 9 (c). Thus we hold that the Tax Court's order denying the exemption is supported by substantial evidence.

It should be noted that judicial review of decisions of the Maryland Tax Court is of a limited nature. By Md. Ann. Code (1957, 1980 Repl. Vol.) art. 81, § 229 (o), the appeal to the Circuit Court shall be determined upon the record of the Maryland Tax Court and will be approved unless the order is erroneous as a matter of law or unsupported by substantial evidence appearing in the record. The test is whether a reasoning mind could conceivably have reached

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[1] Art. 81, § 229(h); *see also*, Fairchild Hiller v. Supervisor, 267 Md. 519, 298 A.2d 148 (1973).

the factual conclusion which the Tax Court reached and, in the application of that test, there must be no judicial fact finding or substitution of judicial judgment for the judgment of the Tax Court. *Comptroller v. Diebold,* Inc., 279 Md. 401, 369 A.2d 77 (1977); *Dickinson-Tidewater v. Supervisor,* 273 Md. 245, 329 A.2d 18 (1974).

Our holding is buttressed by the decision of the Supreme Court of South Carolina in *In Re Marlow,* 269 S.C. 219, 237 S.E.2d 57 (1977). There, the Court held that the residence of the "minister of music and education" at the First Baptist Church at Lyman, South Carolina, was not exempt from property taxation as a parsonage, saying:

> "The record utterly fails to support or demonstrate that the duties of the director of music and education of respondent church fall within the parameters of 'minister' or 'ordained minister' as we have defined those terms. The title of his position does not alone determine whether the residence is exempted. We cannot say that his residence is a 'parsonage' as we have construed that term and therefore exempt from taxation." *Id.* at 60.

III Consideration of Constitutional Issues

The appellant contends that the Circuit Court declined to review the equal protection question although that question was properly presented. The fallacy of this argument is evidenced in Judge Latham's comments as he ruled: "I don't have any problem with the constitutionality and the difference between convent and rectory or parsonage as they call it." The judge simply did not find the Tax Court's ruling constitutionally erroneous. Thus, The Church's argument regarding the Circuit Court's perception of its scope of review is not a basis for reversal of its judgment.

IV Equal Protection

The Church contends that its right to equal protection of the laws was violated when the Supervisor allegedly used a different standard to determine the tax status of a "parsonage" than was used to determine a tax status of a

"convent" or a "rectory." The attack is, of course, not directed at the constitutionality of the statute on its face, but rather on its application. Assuming The Church's contention is supported factually, that does not warrant the remedy sought. The proper remedy would be to bring appropriate proceedings to tax those who are improperly escaping taxation—not to ask that this appellant improperly escape taxation. *See, Samet v. Supervisor of Assessments,* 290 Md. 357, 361, 430 A.2d 73 (1981).

V Entanglement Between Church and State

Finally, The Church contends that the evaluation of the nature and extent of Mr. Smith's activities constituted an impermissible entanglement between church and state in violation of the First Amendment to the United States Constitution which as applied to the states through the Fourteenth Amendment, requires that a state "shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. ..."

Tax exemptions for church property have enjoyed approval since colonial times. *Committee for Public Education & Religious Liberty v. Nyquist,* 413 U.S. 756, 93 S.Ct. 2955, 2975, 37 L.Ed.2d 948 (1973); *Walz v. Tax Commission of City of New York,* 397 U.S. 664, 676, 90 S.Ct. 1409, 1415, 25 L.Ed.2d 697 (1970). *See also, Ballard v. Supervisor of Assessments,* 269 Md. 397, 306 A.2d 506 (1973), where the Court considered and rejected an argument that it was a violation of the free exercise clause of the First Amendment for the Supervisor of Assessments of Baltimore County to evaluate whether a property was being used for public worship so as to be exempt under the predecessor of § 9 (c).

JUDGMENT OF CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. APPELLANT TO PAY THE COSTS.

APPENDIX C

TRANSCRIPT OF HEARING BEFORE HONORABLE RICHARD B. LATHAM, JUDGE, CIRCUIT COURT FOR MONTGOMERY COUNTY OCTOBER 22, 1980

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

Law No. 52139

TRUSTEES OF THE FIRST BAPTIST CHURCH OF SILVER SPRING, MARYLAND

Plaintiff,

v.

SUPERVISOR OF ASSESSMENTS OF MONTGOMERY COUNTY,

Defendant.

October 22, 1980

Rockville, Maryland

Whereupon, the above-entitled matter came on for hearing, pursuant to notice, before the Honorable RICHARD B. LATHAM, judge, presiding, courtroom No. 8, Montgomery County Courthouse, Rockville, Maryland.

APPEARANCES:

GARLAND E. LOWE, ESQ.
Silver Spring, Maryland
Attorney for the Plaintiffs,

PETER W. TALIAFERRO, ESQ.
Rockville, Maryland
Attorney for the Defendant.

THE COURT: Let me say primarily that I have had an opportunity to review everything that we deal with here today on two separate occasions and everything that we initially dealt with some time ago, and in this matter I disagree as I think I made it clear at the time that we had the initial hearing in this matter, as to the designation of Mr. Smith as not being a minister. My disagreement though doesn't necessarily mean the Church wins and the Supervisor of Assessment loses, because my personal review of the evidence is not controlling in this matter.

As Mr. Taliaferro has properly reminded the Court, I am governed by the Rules as we sit here in our appellate capacity, and when we do that in analyzing what we have discussed here today, and what the record reflects and what we discussed at our last hearing, it becomes abundantly clear to me that we deal with a situation here that is certainly fairly debatable, as you gentlemen have clearly demonstrated here today.

Although I don't agree with the ultimate rule reached, certainly my opinion is supported by substantial evidence. Having said those two things, I can't do what you want me to do, Mr. Lowe. Not agreeing with their decision, but being required to as I review this matter, the decision of the Maryland Tax Court in this matter will be affirmed, and if you take this further, Mr. Lowe, I would hope you would send me a copy of your brief.

MR. LOWE: Your Honor, may I make an inquiry just for my own observations as to whether or not, assuming that your finding that the issues addressed by the Tax Court are fairly debatable, it is your finding that the Tax Court addressed the constitutional issues involved with regard to what I characterize as my establishment argument?

THE COURT: I am not sure that they address it in the way that you and I may have or thought they should have, but I am satisfied, Mr. Lowe that it would serve no useful purpose to remand this case to the Tax Court to ask them to direct their attention to that issue. They obviously discussed it in some minute fashion.

It is just that we have administrative agencies and under our rules they make the ultimate decision, and unless it is clearly erroneous or there has been some misapplication of the law, we live with their rules, and that's why they are there.

MR. LOWE: I want to make it clear, Your Honor, you have rendered your decision. I won't take issue with it. Assuming the issues as far as they went were debatable, I guess what I would say is that I would want you to feel compelled that if the issues that they addressed were fairly debatable, but they did not address the issue of equal protection and establishment, that then you would take it upon yourself to reverse on those grounds, even though that was not necessarily an issue before the Tax Court. That is what I am really trying to get a feel for.

THE COURT: I think that my review of the matter would indicate that that's certainly something that they at least discussed and thought about. I am sure Mr. Taliaferro made the same argument to them that he makes here to me today, and his argument although I may not agree with it, if I were the initial person hearing it, I think it demonstrates both from a factual standpoint and a legal standpoint that the Tax Appeal Court must be affirmed in this matter.

MR. LOWE: May I add one point that an administrative body is not a judicial body.

THE COURT: I don't have any problem with the constitutionality and the difference between convent and rectory or parsonage as they call it.

Thank you.

(Whereupon, the above-entitled matter was concluded.)

APPENDIX D

MEMORANDUM OF GROUNDS FOR DECISION,
MARYLAND TAX COURT JUNE 23, 1980

IN THE MARYLAND TAX COURT

No. 1094–B

TRUSTEES OF THE FIRST BAPTIST CHURCH
OF SILVER SPRING, MARYLAND

v.

SUPERVISOR OF ASSESSMENTS OF MONTGOMERY COUNTY

MEMORANDUM OF GROUNDS FOR DECISION

This case was remanded by the Honorable Richard B. Latham, Associate Judge of the Circuit Court for Montgomery County, to this Court, for the purpose of taking further testimony.

At the hearing the parties preliminarily advised the Court that they had entered into three stipulations which they believe may be helpful in resolving the dispute:

(1) That an exemption is not automatically denied because a religious organization may have multiple parsonages.

(2) That exemption is not denied merely because a parson or minister to a religious congregation is not ordained.

(3) That there are catholic churches located in

Montgomery County which maintain convent and rectory which house more than one priest or one nun.

The Petitioner first contends that the initial issue previously presented to the Court by the Respondent, concerning whether or not an exemption should be allowed to a church which has more than one parsonage, has been resolved by the first stipulation. Alternatively, the Petitioner contends that its minister of music provides for and caters to the spiritual needs of the church's congregation. Petitioner argues that the State has no right to say who or who is not a minister or parson for the purposes of Section 9(c) of Article 81.

Having conceded its initial argument that a church or a congregation is limited to one parsonage, the State takes a new tact arguing that it has the right to review the duties of the parson or minister in question, to determine whether or not those duties satisfy the exempt purpose as proscribed by the Legislature.

In *Murray, etc. vs. Comptroller*, 241 Md. 383 (1965) Judge Oppenheimer explained at page 398 as follows:

> "In our reading of the opinions, however, we find broad guidelines which form the frame within which the case before us is to be considered. We are a religious people and recognize the effect religious institutions have on human activity. The First Amendment was designed to erect 'a wall of separation between church and State'. Mutual independence, under our Constitution, is deemed best for the State and best for religion. The State cannot forbid nor can it perform or aid in performing the religious function. Like other broad constitutional concepts, the meaning of 'separation' is to be ascertained in the application of the principle to specific cases. A State cannot pass a law to aid one religion or all religions, but state action to promote the general welfare of society, apart from any religious considerations, is valid, even though religious interests may be indirectly benefited. If the primary purpose of the state action is to promote religion, that action is in violation of the Amendment, but if a statute furthers both secular and religious ends,

an examination of the means used is necessary to determine whether the state could reasonably have attained the secular end by means which do not further the promotion of religion."

With the enactment of Section 9(c), and its predecessors, the Legislature is seeking to promote the general welfare of society in Maryland apart from any religious consideration. To the extent that the activity of any religious group or organization promotes the general welfare of the society of Maryland, those activities and the real property supporting them, based on the facts presented in each particular case, may be the proper recipient of an exemption pursuant to Section 9(c).

Because Section 9(a) requires that all exemptions set forth in that Section be strictly construed, the Supervisor of Assessments has the right and the duty to review, where possible, the activities of an organization seeking an exemption of their real or personal property. In this case, the evidence indicates that Mr. Thomas Cero, Supervisor of Exempt Real Property for the State of Maryland, has reviewed the activities of Mr. Smith as minister of music, and has determined that those activities do not satisfy a strict construction of Section 9(c).

The Supervisor explains that the only dispute between the Petitioner and Respondent is whether Mr. Smith is in fact a minister. He argues that in using the word "parsonage" in Section 9(c), the Legislature envisioned the home of a spiritual leader of a congregation whose primary occupation is that of a promoter of spiritual well being. This person or these persons attached to a single congregation have the responsibility of teaching and counseling others as to their spiritual needs.

We agree with this construction. The evidence in this case indicates that the duties performed by Mr. Smith are those which are generally performed by lay volunteers in other religious organizations. Mr. Smith's primary occupation is not that of a counselor or teacher and based on this fact it is our opinion that his home owned by the Petitioner is not a parsonage.

Accordingly, having provided all parties the opportunity to introduce evidence as directed by the Order of Remand, and having reconsidered our previous decision, the facts presented and the applicable law, we shall pass an order granting an exemption on the home occupied by Mr. Herbert and denying the exemption on the home occupied by Mr. Smith.

APPENDIX E

RULING OF HONORABLE RICHARD B. LATHAM, JUDGE, CIRCUIT COURT FOR MONTGOMERY COUNTY JANUARY 4, 1980

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

Law No. 52139

TRUSTEES OF THE FIRST BAPTIST CHURCH OF SILVER SPRING, MARYLAND,

Plaintiffs,

v.

SUPERVISOR OF ASSESSMENTS OF MONTGOMERY COUNTY,

Defendant.

Rockville, Maryland
January 4, 1980

Whereupon, proceedings in the above captioned matter commenced at 2:00 p.m.

BEFORE:

The Honorable RICHARD B. LATHAM, Judge.

APPEARANCES:

GARLAND E. LOWE, ESQ.
Attorney for the Plaintiffs

PETER W. TALIAFERRO, ESQ.
Attorney for the Defendant

(Judge's ruling only)

Court Reporter: Karen J. Reynolds

PROCEEDINGS

THE COURT: Gentlemen, as I had indicated before the case began today, I had had an opportunity to review this matter. I had had an opportunity to even look up a lot of definitions of parsonages and ministers and whatever.

The Court has concluded that I can't do what you want me to do completely, Mr. Lowe, although, as I indicated to you, Mr. Taliaferro, I agree with the Church's position in this matter, but the Court is going to remand this matter to the Tax Appeals Court of the State of Maryland for the purpose of additional testimony which deals with the equal protection aspect of the case, which my review of the testimony indicated that the Church wasn't permitted to go forward with in its entirety; and secondly, since the State's position as to the question of multiplicity of parsonages seems to have changed at least slightly since this original hearing was held, that additional testimony can be elicited in that area.

The reason that I think that additional testimony might be necessary is because it is clear to me that under the Marlow decision, their finding that there can be just one head of a church who can qualify for use of the parsonage is in my opinion clear error, but I am not completely convinced from a reading of their opinion that this is, in fact, what they found, although I think that it is, and I think that that aspect of the case certainly must be clarified in their opinion so that this will be remanded tc the Appeals Tax Court for the prupose of taking further testimony in accordance with what I have just indicated here.

It's an interesting case, gentlemen, and I appreciate the interesting argument that both of you all gave me this afternoon, along with the memoranda that you have supplied me.

MR. TALIAFERRO: Might we ask for some elaboration on the additional testimony, on the testimony that would compensate for the recognition of the in re Marlow standard that you could have?

THE COURT: I am satisfied that there was, even though this was not the central issue, that there was enough testimony elicited from Reverend Windham as to Mr. Smith's function to qualify him as a minister. I am not sure, though, that Dr. Baker in his capacity with knowledge of the general workings of the Baptist Church—I feel he should be permitted to also demonstrate if he has expertise in that area of this hierarchy and the way that a musical director might function in a normal Baptist Church so that he would be considered a minister for the purposes of equal filing. He qualifies for full salary. He qualifies for the use of the parsonage, and I have some problems about after all that, the parsonage not qualifying for a tax exemption.

I think that what I will ask the Clerk to do is to—not the Clerk, Karen, our Court Reporter, to type up what I have just said so that that becomes part of the record when it goes back before the Tax Court so that they will know what they are supposed to do.

MR. TALIAFERRO: All right.

THE COURT: Do you think that that would be—

MR. LOWE: I think that would be very helpful, your Honor. Will there be an Order prepared?

THE COURT: No, in a law case like this, it will just be remanded, and I will have—I will sign after this is typed up what will amount to the Order in the case, and that will go back as part of the record to the Appeals Tax Court.

MR. TALIAFERRO: Thank you, your Honor.

MR. LOWE: Thank you, your Honor.

MR. SCHNEIDER: You specially admitted Dr. Baker today. Would it be more proper to strike his appearance if it is going to be remanded for testimony?

MR. LOWE: Dr. Baker—sorry for interrupting. Thank you for your point.

I think I probably should inquire, your Honor, that I don't think your Honor really means any limitation on the testimony as it gets remanded, and we had contemplated that were the case to get remanded, probably we would call someone other than Dr. Baker to give the same testimony that Dr. Baker would have given.

THE COURT: I just think that you are entitled to get that testimony on the record, and I don't mean that it has to be by Dr. Baker.

MR. TALIAFERRO: The State would certainly concede that.

MR. LOWE: Thank you, your Honor. I certainly think that the Tax Court didn't want to be put in that position that they would only hear from Dr. Baker.

THE COURT: No, I didn't anticipate that.

I have to sign that Order admitting him in this matter, though. There wasn't any Order submitted with it?

MR. LOWE: This is the Order, your Honor.

(Off-the-record discussion.)

THE COURT: All right, you gentlemen are excused.

(Whereupon, the proceedings were concluded at 3:29 p.m.)

/s/ _____

RICHARD B. LATHAM

CERTIFICATE

I, Karen J. Reynolds, Official Court Reporter for the Circuit Court for Montgomery County, Maryland, do hereby certify that I recorded the foregoing proceedings in the matter of the Trustees of the First Baptist Church of Silver Spring, Maryland vs. Supervisor of Assessments of Montgomery County, Law No. 52139, and that the foregoing is a true and correct excerpt from the stenographic record, to the best of my knowledge and belief.

/s/ _____

KAREN J. REYNOLDS
Court Reporter

ORDER OF CIRCUIT COURT FOR MONTGOMERY COUNTY REMANDING CASE TO MARYLAND TAX COURT

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

Law No. 52139

TRUSTEES OF THE FIRST BAPTIST CHURCH OF SILVER SPRING, MARYLAND,

Appellant

v.

SUPERVISOR OF ASSESSMENTS OF MONTGOMERY COUNTY, MARYLAND

Appellee

ORDER

This matter came before the Court on Appellant's Appeal from the Maryland Tax Court and an oral argument having been heard in open court from the respective parties and the Court having expressed its opinion remanding the case back to the Tax Court for further evidence, said opinion having been transcribed and placed in the file, it is this 5th day of March, 1980, by the Circuit Court of Montgomery County, Maryland,

ORDERED, that the Clerk is hereby authorized and instructed to transmit the file and record in this case back to the Maryland Tax Court for further proceedings according to the Court's opinion.

/s/ _____

RICHARD LATHAM, *Judge*
Circuit Court for
Montgomery County, Maryland

APPENDIX F

MEMORANDUM OF GROUNDS FOR DECISION—MARYLAND TAX COURT MAY 29, 1979

IN THE MARYLAND TAX COURT

No. 1094 A&B

TRUSTEES OF THE FIRST BAPTIST CHURCH OF SILVER SPRING, MD.

v.

SUPERVISOR OF ASSESSMENTS OF MONTGOMERY COUNTY

MEMORANDUM OF GROUNDS FOR DECISION

These consolidated appeals concern the property tax assessment of two single family dwellings located on lots contiguous to property used by The First Baptist Church of Silver Spring, Maryland. The controversy in this case comes about as the result of the Petitioner's contention that each of the two homes in question are used as parsonages and should be exempt from property taxation pursuant to Section 9(c) of Article 81.

The Respondent argues that Section 9(c) was intended to allow only one exemption for a parsonage per church.

Section 9(c) provides as follows:

> "(c) Churches.—Property owned by a religious group or organization and actually used exclusively

> for public religious worship, including parsonages and convents, and property owned by any such group or organization and actually used exclusively for educational purposes."

The facts in this case indicate that The First Baptist Church employed three "Ministers" during the time period in question. Reverend James Windham was the Senior Minister or "Chief of Staff", and owned his own home some distance from the subject property. The assessment of Reverend Windham's property is not in question in this case. Additionally, the Church employed Mr. Herbert and Mr. Smith. Mr. Herbert is an ordained Minister and was in charge of the educational functions of the Church, while Mr. Smith, a commissioned Minister, was the Minister of music and in charge of the 7 Church Choirs. All three of the Ministers would participate in the Church services, and would preach and read from scripture. Of the three Ministers, only Mr. Smith was unable to perform marriages due to State regulations.

In support of their position, the Petitioners argued that a State has no right to interfere with doctrinal differences in religion, and that a construction by the State that 9(c) was intended to allow an exemption to only one parsonage, where a church may in fact require the services of three Ministers and three parsonages, would be unconstitutional.

In its general usage, a parsonage is a house set apart as a residence of the parson. A parson can be defined as the Spiritual Head or Chief of a distinct congregation of religious worship. By his own description, only the Reverend James Windham is a Spiritual Leader or Chief of the congregation which composes The First Baptist Church of Silver Spring, Maryland. Accordingly, it is our opinion that based on the facts in this case, the Legislature would only have intended an exemption to be allowed for a parsonage applied to Reverend Windham. Due to the Fact that Reverend Windham owns his own property, no parsonage exemption can be allowed to the Petitioner.

A careful review of Section 9(c) reveals three separate exemptions which can be granted to property owned by a

religious group or organization. The first is applied to property actually used exclusively by such a group for public religious worship. The second is allowed for property owned by such a group, used as a parsonage or convent, and the third is property owned by such a group which is actually used exclusively for educational purposes. It is our opinion that the home which is used by Mr. Herbert fits within this third category. The evidence indicates that Mr. Herbert is in charge of all educational functions, and we believe that providing him with a home is appropriate and convenient to carry out the purpose of The First Baptist Church of Silver Spring.

In *Maryland State Fair* v. *Supervisor*, 225 Md. 574, 587 (1960), the Court of Appeals relied upon two Cooley, Taxation, Sections 683–685 to allow a property tax exemption for the Maryland State Fair's racetrack. The Court explained: "Even if the exemption be based upon the use made of the property, it is not so limited to property actually indispensable, unless the statute so expressly provides, but instead also includes property obviously appropriate and convenient to carry out the purposes of the exempt institution; . . .".

It is our opinion that the home of Mr. Herbert is property subject to an exemption, and that the home of Mr. Smith is not. Accordingly, we shall pass an order affirming the decision of the Property Tax Assessment Appeal Board of Montgomery County as to the home occupied by Mr. Smith, and reverse the decision of the Property Tax Assessment Appeal Board of Montgomery County which denied an exemption from property tax as to the home occupied by Mr. Herbert.

APPENDIX G

STATE OF MARYLAND

PROPERTY TAX ASSESSMENT APPEAL BOARD

FOR MONTGOMERY COUNTY

Unibank Bldg.—4th Floor
51 Monroe Street
Rockville, Maryland 20850
Area Code 301
279-8333

Feb. 7, 1977

Garland E. Lowe, Attorney-at-Law
1106 Spring Street
Silver Spring, Maryland 20910

Re: Property Tax Assessment Appeal Board Case No. 2944
First Baptist Church of Silver Spring
Pt. Lot 14—Block 4—7,210 Square Feet
Jordan & Smith Add—Account No. 1041095
13th Election District

Dear Mr. Lowe:

This letter is your official notification that the Property Tax Assessment Appeal Board has entered an order REVERSING that part of the ruling of the Supervisor of Exempt Real Property for the State of Maryland denying exemption from taxation for the 1976 levy year with respect to the subject account (playground). In accordance with

the order of the Board, exemption shall be GRANTED on this account.

Further, the Board AFFIRMED that part of the Supervisor's ruling denying exemption from taxation for the 1976 levy year with respect to Account Nos. 1041084 and 1041118.

Under Article 81, section 256, of the Laws of Maryland, you have a right to appeal this ruling to the Maryland Tax Court, 501 St. Paul Street, Baltimore, Maryland 21202. Your appeal must be received by the Maryland Tax Court within thirty (30) days of the date contained on this notice or your appeal will be subject to dismissal.

Very truly yours,

/s/ _____

RUTH M. FOX
Clerk to the Board

cc: Supervisor of Assessments for
Montgomery County
cc: Director of Finance of
Montgomery County
cc: Henry Broadbent, Personal Property Assessor
cc: Thomas A. Cero, Supervisor of Exempt Property
cc: Frank Ecker, Public Advocate

RMF/mc

APPENDIX H

LETTER FROM BERNARD FRENZEL, SUPERVISOR OF ASSESSMENTS TO FIRST BAPTIST CHURCH ADVISING OF DENIAL OF EXEMPTION APRIL 29, 1976

State of Maryland
STATE DEPARTMENT OF ASSESSMENTS AND TAXATION
OFFICE OF
SUPERVISOR OF ASSESSMENTS FOR MONTGOMERY COUNTY
51 Monroe Street
Unibank Building
Rockville, Maryland 20850

BERNARD L. FRENZEL, CAE
Supervisor

W. McGORDON FERGUSON, CAE
Assistant Supervisor

Telephone
Area Code 301
279-1329

April 29, 1976

First Baptist Church of Silver Spring
8415 Fenton Street
Silver Spring, Md. 20910

Re: Acct. #13–22–1041118, 7325 F
Acct. #13–22–1041095, 7210 F
Acct. #13–22–1041084, 7949 F

Gentlemen:

Please be advised that the applications for exemption filed by Mr. Garland E. Lowe on subject properties have been received and carefully considered by the Supervisor of Exempt Property for the State of Maryland.

He disapproved account 1041084 which is a single family residence housing the Minister of Education and account 1041118 which is a single family dwelling housing the Minister of Music. He contends that these do not qualify under Article 81, Section 9(c) of the Tax Laws of Maryland because they are not exclusively a parsonage.

The application on account 1041095 reads "vacant residential lot (unimproved)—playground" and this was disapproved for the reason that its use is not necessary to religious worship.

In view of these decisions the three accounts will be placed on the assessment docket effective July 1 for the 1976 levy.

The assessments for 1976 are:

Acct.	Land	Imp.	Total
1041118	$26550	$ 6300	$32850
1041095	5520		5520
1041084	5590	13700	19290

Under the provisions of Maryland law, you have the right to appeal this decision to the Property Tax Assessment Appeal Board, 51 Monroe Street, 4th Floor, Rockville, Maryland 20850, within thirty (30) days from the date of this letter.

Very truly yours,

/s/ _____

BERNARD L. FRENZEL, CAE
Supervisor of Assessments

Opposition

Office - Supreme Court, U.S.
FILED
MAY 26 1982
ALEXANDER L. STEVAS,
CLERK

No. 81-1971

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

THE TRUSTEES OF THE FIRST BAPTIST CHURCH
OF SILVER SPRING, MARYLAND
Petitioner,

v.

SUPERVISOR OF ASSESSMENTS OF
MONTGOMERY COUNTY, MARYLAND
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF SPECIAL APPEALS OF MARYLAND

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STEPHEN H. SACHS,
Attorney General of Maryland,
DIANA G. MOTZ,
Assistant Attorney General,
Chief of Litigation,
One South Calvert Building,
Baltimore, Maryland 21202,
301-659-4010,
Attorneys for Respondent.

QUESTIONS PRESENTED FOR REVIEW

1. In determining eligibility for property tax exemption for an alleged parsonage, did state review of the congregational contacts of an alleged minister, whose principal function was to direct the church's music programs, interfere with the free exercise of religion or improperly entangle the state in church affairs?

2. Did state review of an alleged minister's congregational contacts in determining the eligibility of his residence for tax exemption as a parsonage, while not exercising such review in determining eligibility of another church's property for exemption as a convent, deny equal protection of the law or favor one church over another?

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NO. 81-1971

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

THE TRUSTEES OF THE FIRST BAPTIST CHURCH OF SILVER SPRING, MARYLAND

Petitioner

v.

SUPERVISOR OF ASSESSMENTS OF MONTGOMERY COUNTY, MARYLAND

Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF SPECIAL APPEALS OF MARYLAND

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

SUMMARY OF ARGUMENT

1. The facts of this case do not establish any transgression of the First Amendment, and, even if they did, prior decisions by this Court have amply addressed the issues raised in the Petition for Certiorari. This case, therefore, raises no important question of federal law not heretofore determined by this Court. Nor does the decision rendered below by the Court of Special Appeals of Maryland conflict

with any applicable decisions of this Court. This case thus does not merit issuance of a writ of certiorari.

2. In determining eligibility for property tax exemption for an alleged parsonage, state review of the congregational contacts of an alleged minister, whose principal function was to direct the church's music programs, does not interfere with the free exercise of religion.

3. In determining eligibility for property tax exemption for an alleged parsonage, state review of the congregational contacts of an alleged minister, whose principal function was to direct the church's music programs, does not improperly entangle the state in church affairs.

4. State review of an alleged minister's congregational contacts in determining the eligibility of his residence for tax exemption as a parsonage, while not exercising such review in determining eligibility of another church's property for exemption as a convent, does not deny equal protection of the law or favor one church over another.

ARGUMENT

The First Baptist Church of Silver Spring, Maryland ("the church" or "the First Baptist Church") argues that three issues it has raised in this case merit review by this court. All of these issues emanate from the fact that the State of Maryland, through the Supervisor of Assessments of Montgomery County, Maryland, in administering its property tax exemption program, had to determine whether or not the church's minister of music, or musical director, was a

clergyman, as contemplated by the state legislature, whose residence was classifiable as a parsonage so as to be exempt from taxation. The church argues that the state's denial of an exemption in this context (1) entailed improper analysis of religious doctrine and ecclesiastical matters, (2) embodied excessive entanglement of state and church affairs, and (3) improperly favored the Roman Catholic Church over the First Baptist Church of Silver Spring. None of these arguments form a basis for issuance of a writ of certiorari, both because the facts of the case (as set forth in the Petition for Writ of Certiorari) do not give rise to these issues, and because the law bearing on these issues has already been amply defined by this Court.

Ecclesiastical or doctrinal analysis

The Supervisor of Assessments of Montgomery County and the Maryland Tax Court, both of which are administrative entities, agreed that the church's minister of music was not primarily involved in any form of congregational counseling. Instead, his principal activities consisted of planning and directing music for worship services, teaching children music, and training seven choirs that often went on tours as part of the church's evangelistic outreach program. These facts formed the basis of the determination that the house provided by the church to the minister of music was not a parsonage. Consideration of these facts entailed no doctrinal or ecclesiastical analysis.

It is not necessary for this Court to establish any further that the First Amendment prohibits governmental analysis of matters of religious doctrine as a basis for decision making. This prohibition is firmly established. Kedroff v. St. Nicholas Cathedral, 344 U.S. 94, 73 S.Ct. 143, 97 L.Ed. 120 (1952); Maryland and Virginia Eldership of Churches of God v. Church of God of Sharpsburg, 393 U.S. 528, 89 S.Ct. 850, 21 L.Ed.2d 750 (1969); Presbyterian Church of the United States v. Mary E. B. Hull Memorial Presbyterian Church, 393 U.S. 440, 89 S.Ct. 601, 21 L.Ed.2d 658 (1969). Even if the state action in this case did entail doctrinal analysis, further review of this issue would not enhance the clear body of law on this subject.

Entanglement

Church and state activities can never be totally divorced. Justice Douglas recognized this in Zorach v. Clauson, 343 U.S. 306, 312, 72 S.Ct. 679, 683, 96 L.Ed. 954 (1952):

> "The First Amendment . . . does not say that in every and all respects there shall be separation of Church and State. Rather, it studiously defines the manner, the specific ways, in which there shall be no concert or union or dependency one on another. That is the common sense of the matter. Otherwise the state and religion would be aliens to each other—hostile, suspicious, and even unfriendly. Churches could not be required to pay even taxes." (Emphasis supplied).

When this Court held that to grant property tax exemptions to religious organizations did not transgress the

First Amendment, Walz v. Tax Commission, 397 U.S. 664, 90 S.Ct. 1409, 25 L.Ed.2d 697 (1970), Chief Justice Burger cited Zorach and extended this observation. The Court recognized that exemption of church property from taxation entailed less entanglement than would occur without such exemptions and observed that a history of exemption had not engendered the sorts of problems that Madison and Jefferson had sought to avoid.

Implicit in this Court's recognition that total separation of church and state is impossible and that a state program of tax exemption for property owned by religious organizations does not offend the neutrality mandated by the First Amendment is an understanding that decisions must be made in administering such a program. The lesson of this analysis is that latitude in decision making exists in the area of property taxation that does not exist in ideological realms such as education. See, cf., Lemon v. Kurtzman, 403 U.S. 602, 91 S.Ct. 1204, 29 L.Ed.2d 745 (1971), reh. den., 404 U.S. 876, 92 S.Ct. 24, 30 L.Ed.2d 123 (1971).

The effect of the decision making is an important factor in determining the tolerability of the entanglement. Governmental decision making affecting only property taxation, rather than ideology, is not an area where strict separation of church and state entanglement must apply. This is particularly evident in the factual circumstances of this case. There is no evidence that subjecting the residence of the minister of music to property taxes in any way

interferes with the free exercise of religion by the congregation of the First Baptist Church of Silver Spring. On the other hand, if any church could obtain a property tax exemption for the residence of any one it alleged was a minister, without any power in the state to review that allegation, political divisiveness on religious lines could become rampant, frustrating the goal of the First Amendment. Everson v. Board of Education, 330 U.S. 1, 8-14, 67 S.Ct. 504, 91 L.Ed. 711 (1947).

Equal protection

The church alleges that it is the victim of improper discrimination because the state granted exemptions for certain convents or rectories without reviewing the congregational contacts of the clerics who lived there, while denying a parsonage exemption for the residence of the church's minister of music after reviewing his congregational contacts. This allegation is without substance. Article 81, §9(c), Md. Ann. Code provides exemptions for "parsonages and convents." These two classes of property are rationally distinct. Maryland law defines a parsonage as "...a house supplied to a parish minister by the parish congregation or church." East Coast Conference of Evangelical Covenant Church v. Supervisor of Assessments of Montgomery County, 40 Md. App. 213, 215-216, 388 A.2d 177 (1978). On the other hand, a convent is typically defined as "a community of nuns or, sometimes, monks, living under strict religious vows" or "the building or buildings occupied by such a group" Webster's New World Dictionary (Second College Edition, 1980),

(emphasis supplied). Thus, a parsonage is a house for a single parish minister, while a convent is housing for a community or group of clerics who need not be ministers. This distinction is present in the evidence in this case. While only the minister of music lived in the house the First Baptist Church sought to have exempted, the exempt convents or rectories each housed more than one priest or nun in a dormitory setting. Further, residents of a convent do not necessarily have the congregational involvement that a parish minister has. Indeed, some convents are the homes of totally cloistered nuns who, by definition, have no community contact.

These facts establish neither preferential treatment of a particular church, nor a problem under the equal protection clause of the Fourteenth Amendment that merits this Court's review. It is rational to have different administrative standards for obtaining the convent exemption than for the parsonage exemption, given the distinctions between these properties and, particularly, the class of residents they house. The different administrative standards of review applied to these two classes of exempt property are rationally related to each class's distinct nature. A state may impose different standards of taxation on different classes of property if the distinction rests upon reasonable consideration of the distinctions between those classes as a matter of public policy. Allied Stores of Ohio v. Bowers, 358 U.S. 522, 79 S.Ct. 437, 3 L.Ed.2d 480 (1959). This is a most mundane

form of constitutional analysis, embodying no important issue for this Court's review.

CONCLUSION

It is respectfully submitted that Petitioner has failed to sustain its burden of establishing that this case arises from a state court's decision of a federal question of substance not heretofore determined by this court. The decision below by the Court of Special Appeals of Maryland did not turn upon an aspect of either the First Amendment's guarantee of free exercise of religion or its prohibition of the establishment of a religion that has not been amply addressed by this Court; nor did the decision involve any novel equal protection issue under the Fourteenth Amendment. Finally, the decision below did not resolve the issues confronting it in a manner conflicting with decisions of this Court bearing on the same matters.

Respectfully submitted,

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